

FCIC - Child Support Guidelines Review Subcommittee

Monday, June 8, 2020

10:00 a.m. – 3:00 p.m.

Virtual Meeting

Conference Call Number: 1-408-792-6300

Access Code: 133 673 6351

Time*	Agenda Items	Presenter
10:00 a.m.	Call to Order	JUDGE DAVID GASS, CHAIR
10:02	Housekeeping and Member Roll Call	SUSAN PICKARD, STAFF
10:10	Welcome and Opening Remarks	JUDGE GASS
10:15	Approval of Minutes <ul style="list-style-type: none"> • February 21, 2020 • April 27, 2020 	JUDGE GASS
	<input type="checkbox"/> <i>Formal Action required</i>	
10:25	Restyling Best Practices	JOHN W. ROGERS SENIOR STAFF ATTORNEY, ARIZONA SUPREME COURT
10:35	Workgroup Reports Topic Transfers <ul style="list-style-type: none"> • Income Issues Workgroup • Tax Issues Workgroup • Deviations Issues Workgroup • Parenting Time Expense and Cost Issues Workgroup • Restyling Workgroup <ul style="list-style-type: none"> ○ Questionnaire-Styled Calculator 	JUDGE GASS STEVE WOLFSON CAROL PARK ADEN JANET SELL CHRIS GORMAN JUDGE BRUCE COHEN
12:00 p.m.	Lunch (on your own)	
12:30	Economic Studies and Arizona Economy Q&A	DENNIS HOFFMAN DIRECTOR OF L. WILLIAM SIDEMAN RESEARCH INSTITUTE AT W.P. CAREY SCHOOL OF BUSINESS AT ARIZONA STATE UNIVERSITY
1:30	Child Support Guideline Review Processes and Methodology Follow Up	DR. JANE VENOHR CENTER FOR POLICY RESEARCH
2:45	Good of the Order/Call to the Public	JUDGE GASS
	Adjournment	

**All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. Please contact Susan Pickard, FCIC-CSGRS staff, at (602) 452-3252 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Angela Pennington at (602) 452-3547. Requests should be made as early as possible to allow time to arrange the accommodation.*

FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

Draft Minutes

February 21, 2019 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge David Gass (Chair), Carol Park Aden, Laura C. Belleau, Mary K. Boyte Henderson, Kellie DiCarlo, Commissioner Joseph Goldstein, Joi Hollis, Ph.D., Jennifer Mihalovich, Janet Sell, Vance Simms, Steve Wolfson

Telephonic: Rosa Torrez, Cherie Wasiel

Absent/Excused: Judge Bruce Cohen, Amanda Stanford

Presenters/Guests: Don Bays, Director Business, Evaluation and Litigation Support Services, Henry + Horne; Chris Gorman, Gorman Consulting Group, LLC

Administrative Office of the Courts (AOC) Staff: Angela Pennington, Susan Pickard, Kathy Sekardi

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 21, 2020, meeting of the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee (FCIC-CSGRS) was called to order at 10:11 a.m. by Judge David Gass, Chair. Staff reviewed housekeeping issues. Judge Gass discussed the importance of the subcommittee and the formation of workgroups. Using his experience with Arizona Townhall, the Judge asked the members to introduce themselves and participate in an ‘icebreaking’ activity.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Orientation

Staff presented Arizona Code of Judicial Administration § 1-202: Public Meetings, and Administrative Order (A.O.) 2019-142 which regulates the use of photographic and video recording devices at appellate courthouses and other designated facilities. She discussed the pre-meeting organization and notification processes. Then, Staff demonstrated and explained the subcommittee’s webpages. Member questions included the following:

- Do we still maintain a digital recording of the meetings?
 - Yes, for one year after the minutes for that meeting are approved, and we can provide copies of the recording if requested.
- Is the Public Comment page publicized in anyway?
 - There is no formal advertisement for the Public Comment page at this time, but we can have one of the workgroups provide guidance for marketing.

Judge Gass and Staff provided advice and guidelines for Call to the Public comments, sidebar conversations with the public, and the distinctions between subcommittee and workgroup meetings.

B. Review of Administrative Order No. 2020-10

Judge Gass discussed the establishing A.O. and the charge of the subcommittee.

C. Data and Case File Review (Taken Out of Order)

Staff announced that Dr. Jane Venohr with the Center for Policy Research has been contracted to conduct the economic and case file review. Dr. David M. Betson has been subcontracted by Dr. Venohr to conduct a full update of his data set. Dr. Betson’s data set will be used as the basis for the Child Support Guidelines. Both contractors are working under a deadline of June 30, 2020.

Members requested that Dr Venohr be invited to the next meeting to discuss the report’s methodology and data.

Action Item: Staff will invite Dr. Venohr to the next meeting.

D. Approval of Committee Rules for Conducting Business

The rules for conducting business were discussed:

- Parameters of a quorum, ex-officio members do not count towards quorum ad do not vote.

Motion: A quorum will be 50% +1 of the subcommittee’s voting members. **Moved by Janet Sell. Seconded by Joi Hollis.** Motion passed unanimously.

- Vote that constitutes a subcommittee action.

Motion: A vote that constitutes an interim action requires 50% +1 of the voting members attending the meeting. A vote that constitutes an action to approve the final report and recommendations of subcommittee requires a vote of 50%+1 of the subcommittee’s voting members. **Moved by Janet Sell. Seconded by Steve Wolfson.** Motion passed unanimously.

- Proxy

Motion: Members are permitted to designate a proxy not more than twice for the subcommittee's duration. Members are not permitted the use of a proxy for the final vote. **Moved by** Steve Wolfson. **Seconded by** Vance Simms. Motion passed unanimously.

- Meeting Schedule – tabled until later in the meeting.

E. Final Report and Recommendations from the Committee for an Interim Review of the Child Support Guidelines

Janet Sell, a member of the 2018 Committee for an Interim Review of the Child Support Guidelines, discussed the important substantive issues that were determined to be outside the scope of that review and which were recommended to be addressed during the current review. There were three:

- Section 27. Federal Tax Exemption for Dependent Children and the penalties of the Affordable Care Act
 - Passage of the Tax Cuts and Jobs Act has removed exemptions for dependent children and the penalty for lack of health insurance
- Section 5(A). Determination of Gross Income of Parents and the question, “may a court attribute income beyond that of regular full-time employment without a showing that the income was historically earned from a regular schedule and is anticipated to continue into the future?”
- Allocating insufficient funds for multiple orders

The intent and steps taken by the previous review committee were discussed. Judge Gass made clear that this subcommittee should focus on drafting the guidelines that are clear without explanation and do not require an intent or purpose statement.

F. Open Discussion and Strategic Planning

Members discussed other issues or matters which may need focus. Topics included:

- Term changes, custodial parent vs. primary parent, paying parent vs. receiving parent
 - Term changes and restyling are fine, the substance should not be changed.
 - Must be able to work as an algorithm in the Child Support Worksheet
- Tables
 - Capping the Schedule of Basic Support Obligations at \$20,000
 - Table B relevance
- Adjustments and deviations
- Costs associated with parenting
 - Based on parenting time

- Extracurriculars and others not covered specifically by statute
- Gross income vs. net income on spousal support
- Credit for new spouses covering costs
- Remarriages where one parent no longer has to work
- Military pay and benefits
- Adoption subsidies
- Social security benefits
- High income earners vs low income earners
- Insufficient funds amongst multiple families
- Health insurance
 - High Deductible Health Plans with a Health Spending Account
 - Unreimbursed costs vs uncovered costs
- Old vs. new orders
- Stepdown orders
- Intrastate orders
- Using federal language
 - Income Withholding Order instead of Order of Assignment
 - There is no presumptive termination date on federal forms
- Using the Maricopa County worksheets instead of the Supreme Court worksheets

These topics will be organized into topic area workgroups. Staff will distribute the workgroup information and request member and chairs volunteers.

D. Approval of Committee Rules for Conducting Business (continued)

- Meeting Schedule – The following meeting dates were offered, discussed, and agreed upon by the members.

○ March 30	○ October 5
○ April 27	○ October 26
○ June 8	○ November 2
○ June 30	○ November 9
○ July 27	○ November 16
○ August 24	

III. OTHER BUSINESS

A. Announcements/Call to the Public

- No one responded to the call to the public.
- Members with an interest in the methodology for the economic basis for the schedule suggested that an expert be included in the discussion with Dr. Venohr.

<p>Action Item: Chris Gorman will identify an expert, most likely someone from ASU's Siedman Research Institute, and will share that person's contact information with staff.</p>
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- B. Next Meeting.** Monday, March 30, 2020; 10 a.m.
Arizona State Courts Building, Conference Room 119 A/B
1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 2:00 pm.

FAMILY COURT IMPROVEMENT COMMITTEE - CHILD SUPPORT GUIDELINES REVIEW SUBCOMMITTEE

Draft Minutes

April 27, 2020 10:00 a.m.

Virtual Meeting

Present:

Telephonic: Judge David Gass (chair), Carol Park Aden, Don Bays, Laura C. Belleau, Mary K. Boyte Henderson J.D., Judge Bruce R. Cohen, Kellie E. DiCarlo, Judge Joseph Goldstein, Chris Gorman, Joi Hollis, Ph.D., Jennifer A. Mihalovich, Janet W. Sell, Rosa Torrez, Steve Wolfson J.D.

Absent/Excused: Vance D. Simms, Amanda Stanford, Cherie J. Waisel

Presenters/Guests: Dennis Hoffman; Director of L. William Sideman Research Institute at W.P. Carey School of Business at Arizona State University; Mellissa Loughlin Sines; Dr. Jane Venohr, Center for Policy Research

Administrative Office of the Courts (AOC) Staff: Angela Pennington, Susan Pickard, Kathy Sekardi

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The April 27, 2020, meeting of the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee (FCIC-CSGR) was called to order at 10:07 a.m. by Judge David Gass, chair. This second meeting of the subcommittee was a virtual meeting, with all attendees appearing online, by phone, or both. Susan Pickard shared the rules of virtual meeting etiquette, then called the roll. Judge Gass asked if there were others who had called into the meeting whose names had not been called. He reviewed the call to the public procedure for a virtual meeting.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Child Support Guideline Review Processes and Methodology

Ms. Pickard introduced Dr. Jane Venohr, The Center for Policy Research (CPR), who has contracted to conduct the case file review and the economic review for the child support guidelines. Dr. Venohr shared her background and explained the objectives and requirements for the quadrennial child support guidelines review. She shared two previous reports and enumerated the new federal requirements for the review. Those requirements include not only a review of the cost of raising children but also the assembly and analysis of

labor market data, rates of default, imputed orders, low-income adjustments and self-support reserve tests, comparisons based on case characteristics, public input.

Dr. Venohr informed the subcommittee of both the CPR and their roles and responsibilities for the review. She then moved on to the proposed data sources that could be used for the review, how they can be applied, and how the federal expansion of requirements for analyzing data will be addressed. The CPR has submitted their requests for data. This will include data from the Division of Child Support Services.

She continued discussing new and ongoing review requirements comparing the federal requirements with steps Arizona is already taking.

The conversation moved on to the economic data analysis. Dr. Venohr described the basis of the analysis and gave possible updates and alternatives to current information sources. She also gave examples of how different studies can affect results. The subcommittee discussed tax credits, and income level discrepancies.

Dr. Venohr discussed the different methods of federal and state tax withholding, child health care costs and alternative methods to calculating these costs for child support. She spoke about the advantages and disadvantages of the different methodology employed by other states. She then gave a quick explanation of the next steps the Center for Policy Research will be taking and then opened the discussion for more questions.

While questions and discussions occurred throughout Dr. Venohr's presentation, they are consolidated below:

Questions

- Why combine reports?
 - Easier to meet fed requirements, and even though there is currently instability in the labor market, CPR will do the best we can with data available.
- Why do averages work for child support? Split custody is not an average situation.
 - Rooted in the history of the child support program. The 1984 Child Support Amendment to the Social Security Act, mandated the requirement of child support guidelines. A 1987 panel report recommended income sharing which relies on average expenditures.
- How are tax credits factored in?
 - The Earned Income Tax Credit (EITC) and Child Tax Credit are not factor in. Dr. Venohr suggested the subcommittee can do a schedule to include.
 - EITC is a means-tested program and considered the most effective anti-poverty program which is why it is not included.
 - Dr. Venohr would not steer the subcommittee steer away including it.

- For states that include the Child Tax Credit, it is considered net income.
 - Is it possible to do a two-table model gross to net conversion?
 - Dr. Venohr states it can be done by using the advancement of the child tax credit on new W-4 but doesn't like this option.
- Will Table B be kept?
 - What formula and percentages were used in the development of Table B.
 -

Comments

- Evidence of ability to pay such as labor market reports of median pay rates is acceptable.
- Adjustments for the self-support reserve test for low income and high-income families.
 - Arizona uses the self-support reserve test when a low-income non-custodial parent is involved.
 - The amount that remains after the application of the self-support reserve test can be inadequate for support.
 - Dr. Venohr was willing to assist in showing how the test is managed in other states.
 - For marked discrepancies in income levels, the income shared model puts the children's needs first.
 - Arizona has a shared parenting time adjustment that starts at one overnight and adjustment for additional dependents.
- Cost of living disparities based on region.
 - The U.S. Bureau of Economic Analysis publishes a report on price parities, but the data will need to be adjusted as the report only shows rural information.
- Extraordinary and non-extraordinary health care costs
 - Arizona does have provisions for health insurance and extraordinary medical expenses. Unreimbursed health care costs are considered on an individual case basis.
 - Addressing High Deductible Health Plans (HDHP) and Health Saving Accounts (HSA).
 - Application of the \$250 medical expense threshold.
- For high-income families, the data does not support the proportionate expenditures for children. Above a certain level excess disposal income is spent on luxuries.

- Gross vs net income for the child support schedule.
 - Alimony is not considered gross income.
- A finite number of parenting days has increased fighting between the parties.
 - Reference Oregon's table which uses a "S" formula and matches the cross credit to match the parents' time and offset it.
- Arizona does not have spousal maintenance guidelines.
 - Schedules should be adjusted keeping all the assumptions we have now, using net income to compare to the current.

B. Economic Studies and Arizona Economy Q & A

While Dr. Hoffman was present on the phone and had asked a number of questions during Dr. Venohr's presentation, he had an emergency meeting. At the chair's discretion Dr. Venohr continued her presentation.

C. Restyling Best Practices

Due to technical difficulties, John W. Rogers, Senior Staff Attorney, Arizona Supreme Court, was unable to login to the meeting. He was rescheduled to attend the June 8th meeting instead.

D. Workgroup Reports

Judge Gass called upon the workgroup chairs for status reports.

Tax Issues Workgroup

The Tax Issues Workgroup met and has scheduled their next meeting for mid-May. The members will be comparing current tax credits and medical exemptions associated with children and the impact on custodial and non-custodial parents.

Income Issues Workgroup

The Income Issues Workgroup had not had an opportunity to meet but is scheduled to meet April 30. The chair asked for feedback on what issues the subcommittee would like them to address.

Deviation Issues Workgroup

The Deviation Issues Workgroup has not had an opportunity to meet. A Doodle Poll will be sent out to pick the best date to meet.

Expenses & Cost Associated Parenting Workgroup

A Doodle Poll is currently pending. The information about the meeting date will be sent out shortly.

Restyling Workgroup

The workgroup is scheduled to meet May 1. The workgroup will focus on:

- reorganizing and restyling the guidelines to make them more user friendly,
- providing pop-up information on the worksheet where numbers are input to bring up the corresponding section of the guidelines. Judge Gass asked the subcommittee to email child support cases they believe are relevant or important to Ms. Pickard.

Judge Gass thanked the workgroups for the work that has been done. He reminded the members of the December 31 review completion deadline.

Action Item: Ms. Pickard was asked to invite Dr. Venohr to attend the next meeting.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- No one responded to the call to the public.
- Judge Gass asked the subcommittee for recommendations to replace a subcommittee member, a non-custodial parent.
 - Ms. Pickard informed the committee that Vice Chief Justice Timmer has requested this applicant be female.

B. Next Meeting. Monday, June 8, 2020 10 a.m. Virtual Meeting

The meeting adjourned at 2:26 pm.

**Guidelines for Drafting
Procedural Rules**
(Revised 11/5/19)

General Principles

- 1. Active Voice.** Use the active voice, i.e., the subject of the sentence is performing an action, which is reflected by the verb.

Example: Former Criminal Procedure Rule 32.4(a): “A proceeding is commenced by the timely filing of a notice of post-conviction relief.”

As revised: “A petitioner may commence a proceeding by filing a notice of post-conviction relief”

Example: Former Criminal Procedure Rule 32.8: “In superior court, the hearing shall be recorded.”

As revised: “In superior court, the court must record the hearing.”

Example: Former Criminal Procedure Rule 32.9(d): “For any other relief granted to a defendant, a stay pending further review is within the discretion of the trial or appellate court.”

As revised: “For any other relief, the trial or appellate court may grant a stay pending further review.”

- 2. Formatting.** To make it easier to find what you are looking for, make generous use of subparts and subheadings, and make lists if a rule calls for multiple items or factors to follow a general rule.

Example: Draft revision to former Criminal Procedure Rule 32.4(a) and(b).

Rule 32.4. Commencing Proceedings for Post-Conviction Relief

(a) Commencement. A petitioner may commence a proceeding by timely filing a notice of post-conviction relief with the court in which the petitioner was convicted.

(b) Notice of Post-Conviction Relief.

(1) Form. The court must make available forms that petitioners may use when filing a notice of post-conviction relief. The notice must bear the caption of the original criminal action or actions to which it pertains.

(2) Timing.

- (A) *As-of Right Cases.* In a Rule 32 of-right proceeding, the petitioner must file the notice within 90 days after the trial court enters judgment and sentence, or within 30 days after the appellate court issues the final order or mandate in the petitioners first petition for post-conviction relief proceeding, whichever is ‘later.
- (B) *Other Non-Capital Cases.* In all other non-capital cases, the petitioner must file the notice within 90 days after the trial court enters judgment and sentence, or within 30 days after the appellate court issues the final order and mandate in the direct appeal, whichever is later.
- (C) *Capital Cases.* In a capital case, the Supreme Court clerk must promptly file a notice for post-conviction relief with the trial court upon issuing a mandate affirming the defendant's conviction and sentence on direct appeal.
- (D) *Late Filing.* If a petitioner fails to timely file a notice, he or she may raise claims only under Rule 32.1(d), (e), (f), (g) or (h).

3. Run-On Sentences. Break-up or simplify overlong sentences.

Example: Former Criminal Procedure Rule 32.3

If a defendant applies for a writ of habeas corpus in a trial court having jurisdiction of his or her person raising any claim attacking the validity of his or her conviction or sentence, that court shall under this rule transfer the cause to the court where the defendant was convicted or sentenced and the latter court shall treat it as a petition for relief under this rule and the procedures of this rule shall govern.

As revised:

If a defendant applies for a writ of habeas corpus and attacks the validity of his or her conviction or sentence, the court with jurisdiction over the proceeding must transfer the action to the court in which the defendant was convicted or sentenced. The court to which the action is transferred must treat the action as a petition for relief under this rule and apply this rule’s procedures.

4. Simpler Words and Proper Word Choice. Prefer simpler words over the more complex and choose words that have the meaning you intend (not a near-miss). See “Terms/Words of Choice” below.

5. Archaic Terms. Avoid archaic, outdated “legalistic” terms such as “hereto,” “therein,” “thereto,” “hereinafter,” “thereafter,” “therewith,” “wherein.” Either restructure the sentence or use a demonstrative pronoun such as “that,” “this,” “these,” or “those.”

6. Ambiguous Terms. Avoid using ambiguous terms.

Do not use “shall,” which has lost all meaning over the years. Instead, use “must,” “may,” “should,” “will,” or “is/are,” depending on the context. Note that the word “should” is generally considered the preferred word of choice if a rule’s command is “directory” but not mandatory. And sometimes it is better to use the present tense of the operative verb if the rule does not involve an act or duty of a court or party (*e.g.*, former Criminal Procedure Rule 1.1—say “These rules *govern* the procedure in all criminal proceedings” rather than “These rules *shall govern* the procedure in all criminal proceedings”).

Use “enter” or “file” instead of “issues” (*e.g.*, former Criminal Procedure Rule 31.19(a) (“Within 30 days after the Court of Appeals issues its decision”)). Some people understand the term “issue” to mean the date when a judge signs an order rather than the date when the order is filed.

Use “order” instead of “direct” when describing court actions. Courts enter orders, not directions.

7. Redundant Terms. Avoid saying the same thing twice, and especially avoid “redundant intensifiers.”

Use “may” instead of “may, in its discretion” (*e.g.*, former Criminal Procedure Rule 16.3(b) “The court, in its discretion, may limit or deny oral argument on any motion.”)). Same for “may, if appropriate.”

Use “must show” rather than “must show affirmatively.”

Use “unless the court orders” rather than “unless the court expressly orders.”

Use “on its own, a court may” not “on its own initiative, a court may.”

8. “Of” Phrases: Minimize the use of “of” phrases. Use possessives if needed.

Use “Supreme Court clerk” rather than “clerk of the Supreme Court.”

Use “superior court clerk” or “clerk” rather than “clerk of the superior court.”

Say “commencing proceedings” rather than “commencement of proceedings” (e.g., Rule 32.4).

Say “after counsel’s appointment” rather than “after appointment of counsel.”

Say “Supreme Court justices” rather than “justices of the Supreme Court.”

Say “opposing counsel’s brief” rather than “the brief of opposing counsel.”

Say “court’s order” rather than “the order of the court.”

- 9. “By” Phrases.** Minimize the use of “by” phrases. In most cases, using “by” only places the subject after the operative verb.

Say “unless the court orders otherwise” rather than “unless ordered otherwise by the court.”

Say “if a party files a motion” rather than “if a motion is filed by a party.”

- 10. Comments.** Avoid using comments. If you need to clarify something about a rule’s requirements, then your rule is ambiguous.

Style and Wording Conventions

- 1. General Rule.** Use the style conventions used in the Federal Rules of Civil Procedure, unless there is a good reason for not doing so. The Federal Rules provide easily identified, and readily accessible, “default” conventions. Another good resource is Bryan Garner, *Guidelines for Drafting and Editing Court Rules* (1996) (“*Guidelines*”).

2. Terms/Words of Choice

- (a) ***Shall:*** Instead of using “shall,” use “must,” “should,” “may,” “will” or “is/are,” as the context dictates. *See Guidelines* at 29. Note that the word “should” is generally considered the preferred word of choice if a rule’s command is “directory” but not “mandatory.”
- (b) ***Clerk:*** The former Arizona civil rules referred to “clerk of court,” “court clerk,” or “clerk.” The federal rules use “clerk”—*see, e.g., Fed. R. Civ. P. 79(a)(1)*. Unless the context of the rule calls for a more specific reference (*i.e., if distinguishing a superior court clerk from an appellate court clerk or a justice court clerk*), use “clerk.”
- (c) ***Days:*** The former civil rules sometimes used words (*e.g., “ten”*), sometimes used numbers instead of words (*e.g., “10”* instead of “ten”) and sometimes

had both (e.g., “ten (10)”). The convention used in the federal rules is to use numbers only if the number is above two. *See, e.g.,* Fed. Rs. Civ. P. 6(d) & 12(a), 18(b) (“two”). Follow the federal convention.

- (d) **Service:** When cross-referencing Civil Procedure Rule 4 service of process, use the phrase “in the same manner that a summons and pleading are served under Rules 4.1 or 4.2, as applicable.” Note that Rule 4.1 and 4.2 refer *only* to the service of a summons and pleading. Thus, for service of other items (such as a subpoena or a Civil Procedure Rule 27 petition), it makes no sense to say that it should be served “under Rules 4.1 or 4.2, as applicable.”
- (e) **“Upon” v. “on”:** Unless there is a temporal element (i.e., something has to happen when an act occurs), use “on,” e.g., “serve on”, not “serve upon.”
- (f) **Where/When vs. If:** The word “where” is not to be used as a synonym for “if” (e.g., “If there are multiple parties on a side,” not “Where there are multiple parties on a side”). “When” is appropriate in some limited circumstances, but, in most cases, “if” should be preferred to “when.” *See Guidelines* at 5.
- (g) Use **“if”** instead of **“in the event that”** or **“on the condition that.”**
- (h) Use **“later”** rather than **“subsequently.”** Similarly, use **“after”** rather than **“subsequent.”**
- (i) Use **“before”** rather than **“prior to.”**
- (j) Use **“under,” “by,” “prescribed by” or “provided in”** rather than **“pursuant to” or “provided by.”**
- (k) **Hereof, herein, thereof, therein:** Avoid use of these words. Either restructure the sentence or use a demonstrative pronoun such as “that,” “this,” “these,” or “those.”
- (l) Use **“on its own,”** not **“on its own initiative.”** *See, e.g.,* Fed. Rs. Civ. P. 39(a)(2), 56(f)(3) & 60(a).
- (m) Use **“after a pleading is filed”** rather than **“after filing of the pleading”**; similarly, use **“after a pleading is served”** rather than **“after service of the pleading.”** If giving direction to the same person/party who just filed/served, **“after filing/serving a pleading.”**
- (n) Use **“a party who”** rather than **“a party that.”** *See, e.g.,* Fed. R. Civ. P. 35(b)(1) & 65(b)(3).

- (o) Use “*attorney’s fees*” not “*attorneys’ fees.*” See, e.g., Fed. R. Civ. P. 37(d)(3). Another alternative—“attorney fees.”
- (p) Use “*attorney,*” not “*lawyer.*” See, e.g., Fed. R. Civ. P. 5(b)(1).
- (q) Use “*local rule*” rather than “*Local Rules of Practice.*” See Ariz. R. Civ. P. 83.
- (r) Use “*the State of Arizona*” when referring to the governmental entity; use “*Arizona*” when referring to activity or persons within or outside state boundaries.
- (s) When referring to a specific number of days or a specific number of items, use “*fewer than*” rather than “*less than.*” But note, if you are talking about a period of time, the proper phrase is “less than.” (E.g., “Not many of these buildings are less than thirty years old.”)
- (t) Use “*no later than*” rather than “*not later than.*” (Synonymous, but “no later than” is considered less formal.)
- (u) **Other Words:** See *Guidelines* at 33-34.

3. Other Style Conventions

- (a) **Cross-references:** References to other rules or other subdivisions should refer to the rule (i.e., “Rule 15(a)(2)”) and **not** use the words “subpart,” “subdivision” or similar words (i.e., “Rule 15(a)(2)” and not “subpart (a)(2)”). If it does not cause confusion and is on the same level, refer simply to the subdivision (e.g., “if allowed in (b),” not “if allowed in subpart (b)”). See *Guidelines* at 35. When referring to “this rule” or “these rules,” the first letter of “rule(s)” should not be capitalized.
- (b) **Heading & Subheading Titles:**
 - (i) **Capitalization:** The former Civil Procedure Rules were inconsistent in capitalizing the first letter in each major word in a rule’s heading. The restyled rules incorporate these guidelines, which are drawn from the Federal Rules of Civil Procedure.
 - (A) Capitalize the first letter of the first word in a heading or subheading, even the rules below indicate that you should not capitalize the first letter of the word.
 - (B) Capitalize the first letter in major words in the rule’s title or subheading.

- (C) Capitalize the first letter in the words “Not,” “Are,” “Is,” and “Be.”
- (D) Do not capitalize the first letter of a conjunction: “but,” “and,” “or.”
- (E) Unless the word begins the heading or subheading, the first letter in the words “to,” “and,” “or,” “but,” and “as” should not be capitalized.
- F. Prepositions: Generally, the first letter of preposition should be capitalized only if it has 5 letters or more. Thus, the following should be capitalized: “After,” “Against,” “Before,” “Between,” “Outside,” “Through,” “Within,” and “Without.” The following should not be capitalized: “with,” “for,” “if,” “by,” “on,” “in,” “at.”

(ii) ***Bolding & Italics:***

- (A) The heading to each rule should be in **bold**.
- (B) Each first-level lettered subdivision (*e.g.*, (a)) should have a subheading, which should appear in **bold**.
- (C) Each second-level numbered subdivision (*e.g.*, (a)(1)) also should have a subheading, which should appear in ***bolded italics***.
- (D) Each third-level letter subdivision (*e.g.*, (a)(1)(A)) should have a subheading, which should appear in *unbolded italics*.
- (E) In contrast to the subheadings, all alpha-numeric subdivision designations (*e.g.*, (a), (1), (A) & (iv)) should be in **bold** and not be in italics or bolded-italics. (For an illustration, *see* Fed. R. Civ. P. 45(a)(1)(A)(iv).)

(iii) ***Use of Parenthesis:*** Subheading alpha-numeric designations should appear in parenthesis (*i.e.*, “(a)(1)(A)(ii),” not “a.1.A.ii.”).

(iv) ***Use of Periods:***

- (A) In the title of a rule, the rule number should be followed by a period, but a period should not follow the title of the rule (*e.g.*, “Rule 4. Summons”).
- (B) In all the subdivisions of a rule, the subheading should be followed by a period, but not the alpha-numeric designation (*e.g.*, “(b) Issuance.”, not “b. Issuance”).

- (c) **Bullets:** Contrary to the recommendation in the *Guidelines*, do not use “bullets” to separate subdivisions.
- (d) **Font, Spacing and Margins:** Consistent with the Arizona Supreme Court’s preferred font style and size for rule amendments, use Times New Roman, 13 typeface. Each subdivision should be single spaced, with each subdivision separated by a 6 point space (including the title of the rule and the first subdivision). Each rule should be separated from the next rule by a 12 or 24 point space. The margins should be standardized, and be right-justified.
- (e) **Commas:** In an enumerated series, use the serial comma before the conjunction. Thus: “books, documents, or tangible things” and not “books, documents or tangible things.” In other words, incorporate the “Oxford comma.”

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Section I. General Information

A. PURPOSES

1. To establish a standard of support for children consistent with the reasonable needs of children and the ability of parents to pay.
2. To make child support orders consistent for persons in similar circumstances.
3. To give parents and courts guidance in establishing child support orders and to promote settlements.
4. To comply with state law (Arizona Revised Statutes, Section 25-320) and federal law (42 United States Code, Section 651 *et seq.*, 45 Code of Federal Regulations, Section 302.56) and amendments, if any.

B. PREMISES

1. The Arizona Child Support Guidelines (the “Guidelines”)~~se guidelines~~ apply to all minor children, whether born in or out of wedlock, and their parents. In some limited cases the Guidelines may apply to adult children and their parents (see Section IV(F)(4)).
2. ~~Because C~~child support has priority over all other financial obligations, ~~the~~The existence of other obligations provides no reason for deviating from the ~~guidelines~~Guidelines. The ~~g~~Guidelines themselves explain how to take account of other legal support obligations in calculating the support required for the children to whom they are being applied.
3. ~~The fact that a~~A parent who receives child support may also be entitled to spousal maintenance.
4. A court establishing both child support and spousal maintenance shall first determine the appropriate amount of spousal maintenance and then follow the provisions of the ~~se g~~Guidelines in taking spousal maintenance into account in setting the amount of child support.
5. Support provided to other persons for whom the parent has no legal duty of support such as ~~the parent’s~~stepchildren or grandparents, provides no basis for adjusting the amount of child support- due under the ~~se g~~Guidelines.
6. In appropriate cases, a parent having more of the parenting time may be ordered to pay child support.

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7. The child support calculation is based on ~~adjusted gross support income~~ the monthly parent income that is available for child support, as defined in ~~these~~ g Guidelines.
8. Child support is set in equal monthly~~;~~ amounts. Therefore, monthly figures are used to calculate the child support obligation. Average monthly figures should be used when income or expense amounts fluctuate over the course of a year.
9. When determining the basic child ~~support obligation~~ monthly needs amount under Section II(F), the amount derived from ~~the Schedule of Basic Child Support Obligations~~ Table 1 shall not be less than the amount indicated on the schedule:
 - a. For six children where there are more than six children.
 - b. For the combined adjusted gross income of \$20,000 where the actual combined adjusted gross income of the parents is greater than \$20,000.
10. ~~The~~ “primary-Primary residential parent²² is the parent who has parenting time with the child for the greater part of the year.

~ ~ ~

FLUCTUATING EXPENSES EXAMPLE: At a child support hearing a parent requests an adjustment for childcare costs (Section II (G)(3)). The parent incurs childcare costs of \$150 per month but only for nine months of the year. The adjustment for childcare costs must be annualized as follows: Multiply the \$150 monthly cost times the nine months that the cost is actually paid each year, for an annual total of \$1,350. Divide this total by 12 months to arrive at an annualized monthly adjustment of \$113 that may be added to the basic child support obligation when determining the child support order.

~ ~ ~

C. PRESUMPTION AND APPLICATION

~~These~~ g Guidelines apply to all actions involving establishment of child support, past child support, or modification of child support, whether temporary or permanent, local or interstate~~;~~. ~~the~~ The amount resulting from application of ~~these~~ g Guidelines shall be the amount of child support ordered, subject to rounding pursuant to Section II(N). These include, without limitation, all actions or proceedings brought under Title 25 of the Arizona Revised Statutes (including maternity and paternity) and juvenile court actions in which a child support order is established or modified.

However, if application of the ~~guidelines~~ Guidelines' results in a child support amount that would be ~~in~~ in appropriate or unjust in a particular case, the court ~~shall~~ may deviate from the

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~~guidelines~~ Guidelines in accordance with Section IV (A). ~~The court shall order the amount under these guidelines absent a deviation pursuant to Section IV(A).~~

Except for defaults or as otherwise agreed upon by the parties, all child support orders entered after June 30, 2021 shall be made pursuant to these ~~se-g~~ Guidelines, whether they be original orders or modifications of pre-existing orders, unless the court determines otherwise based on good cause shown. In cases of default, the guidelines in effect at the time of filing the action will be used. The parties may agree to use either the guidelines in effect at the time of filing the action or those in effect at the time the order is entered.

A substantial variance between an existing child support order and an amount resulting from application of the new guidelines may be considered evidence of a substantial and continuing change of circumstances for purposes of a modification. A variance of at least 15% would be evidence of a substantial and continuing change of circumstances.

D. BASIS OF GUIDELINES

The Arizona Child Support Guidelines are based on the financial resources and needs of the child and of each parent, the standard of living the child would have enjoyed in a two-parent household, and the allocation of parenting time, as contemplated by A.R.S. § 25-320(D).

E. DEFINITIONS

These definitions are for the purpose of these ~~se-g~~ Guidelines only.

~~Adjusted Gross Support Parent Income Adjustment:~~ Adjusted gross support Parent Income Adjustment (“AGSI”) is ~~gross parent~~ income minus the adjustments provided in Section II(D) of these guidelines. This amount may differ from adjusted gross income for tax purposes.

~~Alternate Deduction Support Not Subject to an Order:~~ If a parent provides support for a child that is not the subject of this action and for ~~which-whom~~ there is no court order for support, the parent may include this monthly support amount in the child support calculation; however, the alternate deduction may not exceed the standard deduction that is automatically calculated.

Annualized Paid Amounts: Monthly figures are used to calculate the child support ~~obligation amount~~. Any adjustments to the child support amount shall be annualized so that each month’s child support ~~obligation payment~~ is increased or decreased in an equal amount, instead of the ~~obligation amount~~ for particular months being abated, increased, or decreased. See the Example example found in Childcare Costs Section II(G)(3).

Arrears: The total unpaid support obligation owed by a person under a court order to pay support.

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ATLAS Number: An ATLAS number is the “Arizona Tracking and Location Automated System” number ~~given~~ assigned by the State to child support cases. This is the account number for support payments at the Support Payment Clearinghouse. The ATLAS case number begins with numbers rather than letters.

Basic Child Support Obligation Monthly Needs Amount: The amount found in the ~~Schedule of Basic Support Obligations~~ Table 1. This amount is based on the parents’ combined adjusted ~~gross support~~ gross support incomes and ~~the~~ number of children. ~~The Basic Child Support Obligation Schedule Table 1~~ is part of these ~~g~~ Guidelines.

Calculator: The child support calculator located on the Arizona Judicial Branch website is accessible at:
<https://www.azcourts.gov/familylaw/Child-Support-Calculator-Information>

Children of Other Relationships: Means natural or adopted children who are not the subject of this particular child support determination.

Custodial Parent: ~~The parent with greater parenting time, unless the parents share equal parenting time.~~

Deviation from the Application of the Guidelines: The court may order support that ~~deviates~~ deviates or varies from the ~~guidelines~~ Guidelines after considering all relevant factors, including those set forth in A.R.S. Section 25-320(D) and applicable case law, if certain criteria are met. *See* Section IV(A).

Equal Parenting Time: A parenting time arrangement that allows both parents to spend essentially equal time each year with the child or children.

Extra Education Expenses: Extra education expenses refer to any reasonable and necessary expenses for attending private or special schools or necessary expenses to meet particular educational needs of a child, when such expenses are incurred by agreement of both parties or ordered by the court.

Extraordinary Child Expenses:

Extraordinary expenses are associated with the special needs of a child, when such expenses are incurred by agreement of both parties or ordered by the court.

Gross Parent Income: ~~Gross Parent~~ income includes income from ~~any~~ all allowed source as outlined in Section II(B) ~~and as determined by using Section 5-~~ Parent income can be expressed as an hourly, monthly, or annual amount.

Guideline Support Amount: The guideline support amount is the amount resulting from the application of these ~~se~~ g Guidelines, unless a written finding is made that application of the ~~guidelines~~ Guidelines would be inappropriate or unjust in a particular case.

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Income Withholding Order: An order that requires an employer to withhold support from a paying parent's wages and transfer that withholding to the appropriate agency (the Centralized Collection Unit, the State Disbursement Unit or tribal child support agency.)

~~**Noncustodial Parent:** The parent with less parenting time, unless the parents share equal parenting time.~~

Obligee: The person who is to receive child support payments.

Obligor: The person who owes a child support obligation.

Parenting Time: The number of days per year that the child spends with a parent ~~has physical custody of the child~~, as calculated in Section II(J).

Parenting Time Adjustment: An adjustment to the preliminary support amount to reflect parenting time as calculated under Section II(J).

Parent's Worksheet for Child Support Amount: The Parent's Worksheet for Child Support Amount worksheet is a printable version of the entries and amounts from the child support calculator. (Also referred to as the "~~worksheet~~Worksheet.")

Preliminary Child Support Obligation: The total child support obligation adjusted for parenting time.

Presumptive Termination Date: Upon entry of an initial or modified child support order, the court shall, or in any subsequent action relating to the child support order, the court may, establish a presumptive termination date ("PTD") for the termination of current child support obligation. The presumptive termination date is the last day of the month of the 18th birthday of the youngest child included in the order, unless the court finds that it is projected that the youngest child will not complete high school by age 18. In that event, the presumptive termination date is the last day of the month of the anticipated graduation date or attaining age 19, whichever occurs first.

Primary Residential Parent: Primary residential parent is the parent who has parenting time with the child for the greater part of the year. In the event that the parents share equal parenting time there is no primary residential parent unless the parents agree or the court orders, for reasons not applicable to child support (see A.R.S. § 25-403.07).

Self-Support Reserve: The self-support reserve is an amount equal to 80% of the monthly full-time earnings at the current state minimum wage at the time of the order.

Simplified Application of the Guidelines: The simplified application of the guidelines Guidelines is the amount located in the schedule Table 1 based on the gross-monthly parent income of the parent claiming this adjustment and number of children subject to this adjustment.

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Standard Deduction: The standard deduction is the amount that is automatically calculated (based on a simplified application of the guidelines) and inserted into the calculator. This amount may not be exceeded by an alternate deduction for support provided to other natural or adopted children who are not subject of a court order.

Title IV-D Matter: (Pronounced “four-D”). Title IV-D of the Social Security Act is that portion of the federal law covering the child support enforcement program. The Division of Child Support Services (“DCSS”) is the agency providing the child support enforcement program in Arizona.

Total Child Support Obligation: The total child support obligation is the ~~amount of the basic child support obligation~~ basic child monthly needs amount plus the amount of the adjustments for older children, health insurance, extra education expenses, and extraordinary expenses, if any.

Terms and Definition Correlation Table

GUIDELINES			
Current Term	Definition	Suggested Terms	New Term
Gross Income	Income from all allowed sources as defined in Section 2.B. Amount determined using Section 5. Can be expressed as an hourly, monthly, or annual amount.	Total Income Parent Income Income Available for Child Support	Parent Income
Gross Monthly Income		Monthly Parent Income Monthly Total Income	
Adjusted Gross Income		Modified Income Income Total Income Income for Child Support	Parent Income Adjustment
Alternate deduction		Support not subject to an order item subtracted from	
Standard deduction		Multiple child discount Subtraction for multiple children	
Basic Child Support Obligation	The number determined from the "blank" table		Basic child monthly needs amount
Total Child Support Obligation	How is this different from "Basic Child Support Obligation"		
Total Child Support Order	How is this different from "Final Child Support Obligation"		
Guideline Support Amount	Does this really need to be a different term from "Basic Child Support Obligation"?		
Adjusting Support Amounts	Confusing term. Adjusting what?		
Deduction	Tax term and sounds confusing. Subtraction, decrease could be easier to understand.		

Terms and Definition Correlation Table

WORKSHEET			
Current Term	Definition	Suggested Terms	New Term
Parenting Time Cost Adjustment	Maybe use "Custodial Adjustment" or "Time Adjustment".		
Preliminary Child Support Obligation	Confusing term. Guidelines also appear to use preliminary support. Could just call it "support before parenting time adjustment" if it even needs to be referenced.		
Final Child Support Obligation	Confusing term, could just be "Calculated Child Support".		

The 10,000 foot look at what is really done in as simple a language as we could possibly use:

1) Parent Income

Items Added to Parents Income

Items Subtracted from Parents Income

2) Calculated Child Support:

Amount from the table

Items Added to Amount from the table

Items Subtracted from Amount from the table

3) Parenting Time Adjustment

4) Parent's Self Support Test

5) Calculated Child Support

Review of the Arizona Child Support Guidelines: Followup Materials to Various Questions

Submitted to:
Arizona Supreme Court
Administrative Office of the Courts

Submitted by:
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(Working Draft: June 4, 2020)

Points of view expressed in this document are those of the author and do not necessarily represent the official position of the Court. The authors are responsible for any errors and omissions.

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DRAFT

LIST OF TOPICS AND QUESTIONS

1. Spousal Maintenance
 - a. Do you have data/information you can share about the average spousal maintenance amount, duration and tax variables?
 - b. Gross versus net income – NCP is paying spousal support and child support. NCP income is treated as gross, while spousal maintenance on the CP side is treated as net causing an imbalance in AGI and impact on NCP cash flow. (See attached slides as explanation)
 - c. Examples of worksheets.
2. Flexible Spending Accounts (FSAs) and Health Savings Accounts (HSAs)
 - a. Addressing pretax FSA-HSA accounts for childcare or medical, deductibles and co-pays?
3. What is included in the economic data on the cost of raising children.
 - a. Are data plans, cell phone and other tech, probation fees considered extraordinary expenses?
 - b. As income increases are expenses for 'luxury' items included in the expenditures and therefore a portion of the basic child support amount?
 - c. Is there a state that addresses handles transportation expenses for teenagers.
4. Information about differences in cost of living within state.
5. High income
 - a. What is the percentage of cases above the \$20K table cap/Number of states with >\$20K caps
6. Requested a copy of Betson's methodological report.

SPOUSAL MAINTENANCE

In 2017, Congress reformed federal tax code. Although the major change was lower tax rates, it also repealed the federal tax deduction for alimony orders established after December 31, 2018. The repeal of the alimony deduction increases the federal income tax liability of parents owing alimony/spousal maintenance in most circumstances. In turn, this means these parents would have less spendable (after-tax) income available for child-rearing expenditures.

The repeal of the alimony deduction also affects parents receiving spousal support because they no longer have to pay federal taxes on it. In turn, this means these parents would have more spendable (after-tax) income available for child-rearing expenditures.

TREATMENT IN OTHER STATES

As of August 2018, CPR knew of only three states to change their child support or spousal formulas to recognize these changes. Exhibit 1 is adapted from a report CPR prepared for Pennsylvania in August 2018¹ to help them modify their spousal support formula. Pennsylvania bases its spousal support formula and child support guidelines on after-tax income.

Colorado is the only one of these three states to rely on gross income for both its child support and spousal support formulas. So, it is the most similar to Arizona, which also relies on gross income.

- Colorado, reduced its spousal support formula by a factor of 75 or 80 percent depending on the income level. Colorado also increased the amount of spousal support that would be deducted/added to the income of the party paying spousal support/party receiving spousal support if that spousal support was set after December 31, 2018, hence would not be tax deductible or subject to taxes. Colorado increases that spousal support by 125 percent. This means, for example, that if the obligor pays \$100 per month in spousal support (for an order that was established January 2, 2019), \$125 is subtracted from the obligor's income when determining the child support order. Similarly, if the obligee receives \$100 per month in spousal support (for an order that was established January 2, 2019), \$125 is added to the obligee's income when determining the child support order. The Colorado worksheet is shown later.
- Illinois switched from a gross-income based formula to the after-tax income formula shown in Exhibit 1.
- Pennsylvania's switched from a net-income formula to a different net-income formula. The major change in Pennsylvania was the calculation of spousal support *before* the calculation of child support. For decades, Pennsylvania was the only state to calculate child support *before* spousal support.

All three states provide for the usage of the old formula in older cases where the spousal support is still tax deductible for the parent paying it and taxable income to the parent receiving it.

¹ Venohr, Jane. (Aug. 2018.) *Repeal of the Federal Tax Deduction for Alimony: An opportunity to Review the Pennsylvania Formula for Spousal Support/Alimony Pendente Lite*. Report to the Supreme Court of Pennsylvania. Retrieved from <http://www.pacourts.us/assets/uploads/Resources/Documents/Repeal%20of%20the%20Federal%20Tax%20Ded%20for%20Alimony%20-%200007327.pdf?cb=136e4>

Exhibit 1: Comparison of Spousal Support Formulas in Selected Jurisdictions

American Academy of Matrimonial Lawyers 2007 Recommendation ²	30% of the payor's gross income minus 20% of the payee's gross income (not to exceed 40% of combined gross)
Santa Clara County, CA ³	40% of the net income of the payor minus 50% of the net income of the payee
Colorado ⁴	<p><i>If the maintenance award is deductible for federal income tax purposes by the payer and taxable income to the recipient</i></p> <p>40% of the combined parties' combined monthly adjusted gross income minus the lower income party's monthly adjusted gross income</p> <p><i>If the maintenance award is not deductible for federal income tax purpose by the payer and taxable income to the recipient and</i></p> <ul style="list-style-type: none"> the monthly adjusted gross income of the parties is \$10,000 or less <p>The formula is 80% of the above</p> <ul style="list-style-type: none"> and the monthly adjusted gross income of the parties is more than \$10,000 but not more than \$20,000 <p>The formula is 75% of the above</p>
Illinois ⁵	33 1/3% of the payor's net annual income minus 25% of the payee's net annual income (not to exceed 40% of combined net)
Johnson County, KS ⁶	<p><i>If there are no children</i></p> <p>Payor's gross monthly income multiplied by 0.30 Minus Recipient's gross monthly income multiplied by 0.50</p> <p><i>If there are children for whom child support is paid</i></p> <p>Payor's gross monthly income multiplied by 0.28 Minus Recipient's gross monthly income multiplied by 0.58</p>
Massachusetts ⁷	30 to 35 percent of the difference between the parties' gross incomes
New Mexico ⁸	Same as Johnson County, KS
New York ⁹	<i>Payor's income less than \$184,000 per year and child support will be paid for children of the marriage and the maintenance payor is the noncustodial parent</i>

²Jackson, L.J. (Feb. 2012). "Alimony Arithmetic: More States Are Looking at Formulas to Regulate Spousal Support." *ABA Journal*. Retrieved from http://www.abajournal.com/magazine/article/alimony_arithmetic_more_states_are_looking_at_formulas_to_regulate_spousal.

³The Superior Court of California: County of Santa Clara. (n.d.) *Local Family Rule 3*. Retrieved from http://www.sccourt.org/court_divisions/family/family_rules/family_rule3.shtml#D.

⁴Colorado House Bill 1385 (2018). Retrieved from <https://leg.colorado.gov/bills/hb18-1385>.

⁵Illinois Senate Bill 2289 (2018). Retrieved from <http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=SB&DocNum=2289&GAID=14&SessionID=91&LegID=108578>.

⁶RS Law Attorney. (n.d.) Spousal Support. Retrieved from <https://rslawkc.com/spousal-support-kansas/>.

⁷Mass.gov. (n.d.) *How the court determines alimony*. Retrieved from <https://www.mass.gov/service-details/how-the-court-determines-alimony>.

⁸[New Mexico] Statewide Alimony Guideline Committee. (2006). *Alimony Guidelines and Commentaries*. Retrieved from https://nmfinanciallaw.com/wp-content/uploads/2015/10/Revised_Alimony_Guidelines.pdf

⁹New York State Unified Courts (n.d.) *The Law – Divorce Resources*. Retrieved from <https://www.nycourts.gov/divorce/MaintenanceChildSupportTools.shtml>.

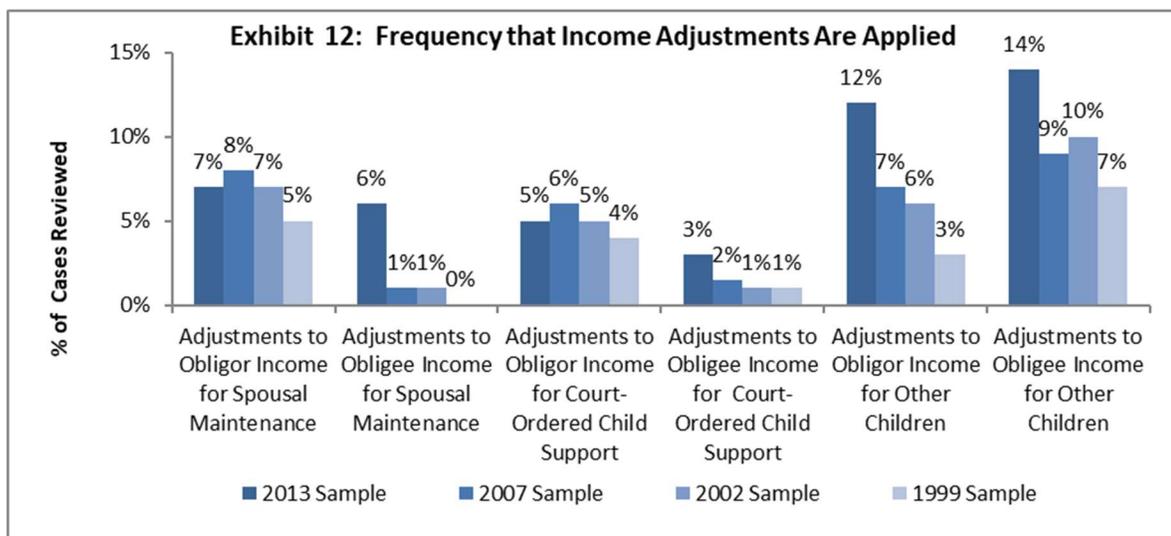
	<p>20% of Maintenance Payor's Income¹⁰ Minus 25% of Maintenance Payee's Income</p> <p><i>Payor's income greater than \$184,000 year</i></p> <p>30% of Maintenance Payor's Income Minus 20% of Maintenance Payee's Income</p> <p>(capped at 40% of combined income)</p>
Pennsylvania	<p>Old formula <i>With Dependent Children</i></p> <p>30% obligor's monthly net income minus obligee's net monthly income</p> <p><i>Without Dependent Children</i></p> <p>40% obligor's monthly net income minus obligee's net monthly income</p> <p>New Formula <i>With Dependent Children</i></p> <p>33% obligor's monthly net income minus 40% obligee's net monthly income</p> <p><i>Without Dependent Children</i></p> <p>25% obligor's monthly net income minus 30% obligee's net monthly income</p>
Fairfax County, VA ¹¹ (Temporary support)	<p><i>If there are no children</i></p> <p>Payor's gross monthly income multiplied by 0.30 Minus Recipient's gross monthly income multiplied by 0.50</p> <p><i>If there are children for whom child support is paid</i></p> <p>Payor's gross monthly income multiplied by 0.28 Minus Recipient's gross monthly income multiplied by 0.58</p>

¹⁰ New York subtracts FICA an N.Y.C. or Yonkers tax but not federal income tax or state income tax.

¹¹ Livesay and Myers. (n.d). *Spousal Support. in Virginia*. Retrieved from <https://www.livesaymyers.com/divorce-lawyers/spousal-support/>.

SPOUSAL MAINTENANCE AMOUNT, DURATION AND TAX VARIABLES

The below exhibit is from the 2013 case file review report.¹² The frequencies include both deductions from and additions to child support guidelines income for spousal maintenance. No data were collected on duration of spousal maintenance award.



- **7% of child support obligors had an adjustment to income for spousal maintenance.** The adjustment was for the payment of spousal support for 5% and the receipt of spousal support for 2%.
 - **For those child support obligors receiving spousal support,** monthly spousal support averaged \$1,303 and ranged from \$250 to \$3,000 where most were between \$1,000 to \$1,700 per month.
 - Among these child support obligors, the average gross income was \$1,628 per month and ranged from \$718 to \$3,120 per month. Based on income alone, this would put them in the 10-12 percent tax bracket under 2020 federal income tax rates.
 - **For child support obligors paying spousal support,** monthly spousal maintenance averaged \$1,377 and ranged from \$120 to \$10,000.
 - Among these child support obligors, the average gross income was \$7,836 per month and ranged from \$1,560 to \$37,500 per month. About 30 percent had incomes less than \$3,600 per month, which roughly puts them in the 10-12 percent federal tax bracket, and about 60% had incomes in the next two tax federal tax bracket (22 and 24%), and the remaining 10 percent had incomes in the 32, 35 or 37 percent income tax brackets.

¹²Venohr, Jane and Slattery-Quintanilla, Claire. (Aug. 2014.) *Arizona Child Support Guidelines Review: Findings from Case File Data*. Report to Arizona Supreme Court Administrative Office of the Courts. Retrieved from <http://www.azcourts.gov/Portals/31/GuidelinesReview/AZChildSupportGuidelinesReviewFindingsfromCaseFileData082014RED.pdf>.

- **6% of child support obligees had an adjustment to income for spousal maintenance.** All but two obligees received spousal maintenance. The monthly spousal maintenance averaged \$1,356 and ranged from \$120 to \$10,000. About 60% received less than \$1,000 per month. The average income of child support obligees receiving spousal support was \$1,824 per month and ranged from zero to \$4,500 per month although about 85 percent had income less than \$3,600 per month, which roughly would put them in the 10-12 percent federal income tax bracket.

For those receiving maintenance, regardless whether they are the child support obligor or obligee, the vast majority are in the 10-12 percent federal tax bracket, which would make the Colorado adjustment too high. For child support obligors paying maintenance, there is more variation in their federal tax bracket. Colorado’s 25 percent would be a reasonable midpoint.

Colorado Worksheet Adjustment for Maintenance Paid or Received

Check box of parent with 273 or more overnights per year*	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	Combined
1. Monthly Gross Income	\$	\$	
a. Plus maintenance (spousal/partner support) received multiplied by 1.25	+	+	
b. Minus maintenance paid multiplied by 1.25	-	-	
c. Minus ordered child support payments for other children pursuant to §14-10-115(6)(a), C.R.S.	-	-	
d. Minus legal responsibility for children not of this marriage/civil union/relationship pursuant to §14-10-115(6)(a)(II) and (III), C.R.S.	-	-	
e. Minus ordered post-secondary education contributions**	-	-	
2. Monthly Adjusted Gross Income (If either the paying parent's or combined income is less than \$1,100.00, enter \$50.00 for one child; \$70.00 for two children; \$90.00 for three children; \$110.00 for four children; \$130.00 for five children; and \$150.00 per month for six or more children on line 11 for paying parent.)	\$	\$	\$
3. Percentage Share of Income (Each parent's income from line 2 divided by Combined Income)	%	%	

Pennsylvania Worksheet

PART B. SPOUSAL SUPPORT OR ALIMONY PENDENTE LITE

		<i>Without Dependent Children</i>	<i>With Dependent Children</i>
5.	Obligor's Monthly Net Income (line 4)	_____	_____
6.	Obligor's child support, spousal support, alimony <i>pendente lite</i> or alimony obligations to children or former spouses who are not part of this action, if any. (See Pa.R.C.P. No. 1910.16-2(c)(2))	(_____)	(_____)
7.	Obligor's Net Income available for spousal support or alimony <i>pendente lite</i> (line 5 minus line 6)	_____	_____
8.	Obligor's Net Income percentage for spousal support or alimony <i>pendente lite</i>	\times <u>33%</u>	\times <u>25%</u>
9.	Obligor's proportionate share of spousal support or alimony <i>pendente lite</i> (line 7 multiplied by line 8)	_____	_____
10.	Obligee's Monthly Net Income (line 4)	_____	_____
11.	Obligee's Net Income percentage for spousal support or alimony <i>pendente lite</i>	\times <u>40%</u>	\times <u>30%</u>

		<i>Without Dependent Children</i>	<i>With Dependent Children</i>
12.	Obligee's proportionate share of spousal support or alimony <i>pendente lite</i> (line 10 multiplied by line 11)	_____	_____
13.	Preliminary Monthly Spousal Support or Alimony <i>Pendente Lite</i> amount (line 9 minus line 12—if the result is less than zero, enter a zero on line 13)	_____	_____
14.	Adjustments for Part E Additional Expenses (See Pa.R.C.P. No. 1910.16-6)	_____	_____
15.	Total Monthly Spousal Support or Alimony <i>Pendente Lite</i> Amount (line 13 plus or minus line 14, as appropriate)	_____	_____

FLEXIBLE SPENDABLE ACCOUNTS (FSA) AND HEALTH SAVINGS ACCOUNT (HSA)

Without searching each state's guidelines, CPR does know of any state guidelines that specifically address Flexible Spending Accounts (FSAs) and Health Savings Accounts (HSAs). (CPR also did check a few state that have more details than others on income and tax-related benefits that affect income and found nothing in these states.)

- **Health FSAs.** In 2020, an employee may contribute up to \$2,750 pre-tax to a health FSA if offered by the employer. The employer may also contribute to the health FSA.
- **Child Care FSAs.** In 2020, the maximum dependent-care FSA contribution is \$5,000.
- **HSAs.** Employers with high deductible health plans may offer a HAS. In 2020, an employee with self-only health coverage can contribute a maximum of \$3,500 pre-tax and an employee with family health coverage can contribute a maximum of \$5,000 pre-tax.

Due to the maximum contributions allowable under FSAs and HSAs, the tax impact is likely to be relatively small given the federal income tax rate rates range from 10 to 37 percent. For example, a parent who contributes the maximum HAS of \$3,500 and is in the 37% tax bracket, would have a monthly income difference of \$108 (\$3,500 multiplied by 37% divided by 12 months).

In contrast, many states (including Arizona) address the federal child care tax credit. The child care tax credit can be more substantial because it is a credit against taxes rather than affecting the amount of the income that is taxable, which is what the FSA and HAS does. The child tax credit is 20-35% of the child care expenses up to \$3,000 per year for one child and \$6,000 per year for two or more children. So for one child, a parent could realize a tax credit equivalent to \$62.50 per month (\$3,000 multiplied by 25% divided by 12 months).

WHAT IS INCLUDED IN MEASUREMENTS OF CHILD-REARING EXPENDITURES

The measurements of child-rearing expenditures in the schedule include all expenditures except:

- Childcare expenses
- Healthcare expenses in excess of \$250 per child per year.

The schedule should be viewed as the average spent for that family size and income. It is based on the U.S. Bureau Consumer Expenditure Survey (CES) which surveys thousands of households per year on hundreds of items. The exhibit below provides a partial list of items. More detail can be found from the actual survey. The survey instrument is over 500 pages long.¹³

¹³ U.S. Bureau of Labor Statistics. (n.d.) *Consumer Expenditure Surveys Interview Questionnaire (CEQ) – 2019*. <https://www.bls.gov/cex/capi/2019/2019-CEQ-CAPI-instrument-specifications.pdf>

Exhibit C-2: Partial List of Expenditure Items Considered in the Consumer Expenditure Survey

Housing	Rent paid for dwellings, rent received as pay, parking fees, maintenance, and other expenses for rented dwellings; interest and principal payments on mortgages, interest and principal payments on home equity loans and lines of credit, property taxes and insurance, refinancing and prepayment charges, ground rent, expenses for property management and security, homeowners' insurance, fire insurance and extended coverage, expenses for repairs and maintenance contracted out, and expenses of materials for owner-performed repairs and maintenance for dwellings used or maintained by the consumer unit. Also includes utilities, cleaning supplies, household textiles, furniture, major and small appliances and other miscellaneous household equipment (tools, plants, decorative items).
Food	Food at home purchased at grocery or other food stores, as well as meals, including tips, purchased away from home (e.g., full-service and fast-food restaurant, vending machines).
Transportation	Vehicle finance charges, gasoline and motor oil, maintenance and repairs, vehicle insurance, public transportation, leases, parking fees, and other transportation expenditures.
Entertainment	Admission to sporting events, movies, concerts, health clubs, recreational lessons, television/radio/sound equipment, pets, toys, hobbies, and other entertainment equipment and services.
Apparel	Apparel, footwear, uniforms, diapers, alterations and repairs, dry cleaning, sent-out laundry, watches, and jewelry.
Other	Personal care products, reading materials, education fees, banking fees, interest paid on lines of credit, and other expenses.

DATA PLANS, CELL PHONES, AND PROBATION FEES

Are data plans, cell phone and other tech, probation fees considered extraordinary expenses?

A recent Pew Research study found that 96 percent of Americans owned a cellphone and little variation by income.¹⁴ That is even low-income Americans have cell phones. In effect, cell phones (and data plans) are part of the norm; hence would show up in the average, which is what the schedule captures.

Probation fees are not usual for children. A 2009 study found just under 200,000 youth on probation.¹⁵ There were about 74 million children in the US in 2009. So, if each youth on probation actually paid a \$100 per month fee; this would convert to an average of about \$0.25 per child. Given that probation fees are not always paid, the actual average would be less than a \$0.25. To this end, the court may want to consider probation fees for a child as an extraordinary expense.

TRANSPORTATION AND INSURANCE EXPENSE FOR TEENAGERS

CPR recalls this issue came up in another state but could not identify the state. Moreover, CPR does not know of a state that specifically mentions this expense. In addressing it, one issue would be the ages at which the child began driving and the child emancipates. Another issue is whether the vehicle is purchased or leased. On average, there is little difference in the average vehicle purchase among married couples by the age of their children. Without more in-depth analysis, it is unknown whether the average vehicle purchase among married couples would vary by the age of their children at higher incomes.

¹⁴ Pew Research Center. (June 12, 2019.) *Mobile Fact Sheet*. Retrieved from: <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

¹⁵ Retrieved from <https://jije.org/2010/09/08/new-census-of-children-on-probation/>.

Another issue is whether the vehicle is necessary for the child to attend school or other activities. For example, the child may need the vehicle to attend school (when there is a limitation on the school-provided transportation) or may use it because they participate in a particular sport.

GUIDELINES AMOUNTS AT HIGH INCOMES

This is from the 2014 case file review report.

The guidelines schedule provides basic obligations for parental combined adjusted gross incomes up to \$20,000 per month. For incomes above \$20,000, the guidelines provide that the highest amount on the schedule shall be used and a parent requesting more bears the burden of proof of evidence that child-rearing expenses should be more.

There were only seven cases (1% of the 2013 sample) in which the combined adjusted gross income of the parents exceeded \$20,000 per month. The comparable percentage from the 2007 sample was 2 percent. There were only five cases (less than 1% of the 2013 sample) in which the obligor's gross income (before adjustments) exceeded \$20,000 per month. No obligee had a gross income in excess of \$20,000 per month.

Most guidelines tables include obligations for combined gross and net incomes up to \$10,000 to \$30,000 per month. Most states stop their child support guidelines schedule at the highest income for which the measurements are reliable. There are 12 states that provide a presumptive formula to an infinite amount of income. The percentages in these states range from 6 to 25 percent of gross or net income for one child, and from 7 to 33 percent of gross to net income for two children. The percentages tend to be higher among those states relying on the Melson formula (i.e., Delaware, Hawaii, and Montana). For example, Delaware provides 19 percent for one child and 27 percent for two children. The percentages also tend to be lower in those states that essentially factor in the diminishing rate of expenditures at higher incomes; that is, as income rises, a smaller percentage of income is actually spent. For those states, the percentages range from 6 to about 10 percent for one child and 7 to 15 percent for two children at very high incomes. Pennsylvania's formula at high incomes is based on an extrapolation of the Betson-Rothbarth measurements, which is the most common economic basis of state guidelines. The Pennsylvania percentages at after-tax incomes above \$30,000 per month are 8.6 percent for one child and 11.8 percent for two children. Most states guidelines do not provide a formula for incomes above the highest considered in the table/schedule, but provide for court discretion above that income and that the court cannot use an amount lower than the highest amount from the table/schedule for that number of children. Colorado's language, which is shown below, is pretty typical of state guidelines in that it leaves it to judicial discretion and does not place the burden on a party to justify a higher amount.

Excerpt from Colorado

(E) The judge may use discretion to determine child support in circumstances where combined adjusted gross income exceeds the uppermost levels of the schedule of basic child support obligations; except that the presumptive basic child support obligation shall not be less than it would be based on the highest level of adjusted gross income set forth in the schedule of basic child support obligations.

Most states provide for court discretion at incomes above the highest amount considered in their schedule. Nevada guidelines is the notable exception. It provides a cap on child support that is updated every year.

REGIONAL DIFFERENCES IN COST OF LIVING

In 2018, Arizona’s price parity was 96.5, which means that Arizona’s cost of living was 3.5 percent less than the U.S. average.¹⁶ The state’s price parity for rent alone was 93.4.

Regional price parities (RPP) for various metropolitan areas in the Arizona are shown below. There are four different price parties for each region. All items RPPs cover all consumption goods and services, including housing rents. Then, there are individual RPPs for each component: consumption goods, services and rents.

The table shows wide variation in rents and lower amounts for all consumer items in Sierra Vista-Douglas and Yuma areas.

ieoFips	GeoName	LineCode	Description	2018
:2380	Flagstaff, AZ (Metropolitan Statistical Area)	1	RPPs: All items	98.5
:2380	Flagstaff, AZ (Metropolitan Statistical Area)	2	RPPs: Goods	98.8
:2380	Flagstaff, AZ (Metropolitan Statistical Area)	3	RPPs: Services: Rents	104.8
:2380	Flagstaff, AZ (Metropolitan Statistical Area)	4	RPPs: Services: Other	93.6
:8060	Phoenix-Mesa-Chandler, AZ (Metropolitan Statistical Area)	1	RPPs: All items	98.1
:8060	Phoenix-Mesa-Chandler, AZ (Metropolitan Statistical Area)	2	RPPs: Goods	95.2
:8060	Phoenix-Mesa-Chandler, AZ (Metropolitan Statistical Area)	3	RPPs: Services: Rents	100.6
:8060	Phoenix-Mesa-Chandler, AZ (Metropolitan Statistical Area)	4	RPPs: Services: Other	99.6
:9150	Prescott Valley-Prescott, AZ (Metropolitan Statistical Area)	1	RPPs: All items	95.1
:9150	Prescott Valley-Prescott, AZ (Metropolitan Statistical Area)	2	RPPs: Goods	98.8
:9150	Prescott Valley-Prescott, AZ (Metropolitan Statistical Area)	3	RPPs: Services: Rents	91.2
:9150	Prescott Valley-Prescott, AZ (Metropolitan Statistical Area)	4	RPPs: Services: Other	93.6
:3420	Sierra Vista-Douglas, AZ (Metropolitan Statistical Area)	1	RPPs: All items	88.8
:3420	Sierra Vista-Douglas, AZ (Metropolitan Statistical Area)	2	RPPs: Goods	98.8
:3420	Sierra Vista-Douglas, AZ (Metropolitan Statistical Area)	3	RPPs: Services: Rents	71.1
:3420	Sierra Vista-Douglas, AZ (Metropolitan Statistical Area)	4	RPPs: Services: Other	93.6
:6060	Tucson, AZ (Metropolitan Statistical Area)	1	RPPs: All items	93.9
:6060	Tucson, AZ (Metropolitan Statistical Area)	2	RPPs: Goods	93.5
:6060	Tucson, AZ (Metropolitan Statistical Area)	3	RPPs: Services: Rents	86.5
:6060	Tucson, AZ (Metropolitan Statistical Area)	4	RPPs: Services: Other	100.4
:9740	Yuma, AZ (Metropolitan Statistical Area)	1	RPPs: All items	88.9
:9740	Yuma, AZ (Metropolitan Statistical Area)	2	RPPs: Goods	93.5
:9740	Yuma, AZ (Metropolitan Statistical Area)	3	RPPs: Services: Rents	70.2
:9740	Yuma, AZ (Metropolitan Statistical Area)	4	RPPs: Services: Other	100.4

¹⁶ U.S. Bureau of Economic Analysis. (2020). *2018 Regional Price Parities by State (US = 100)*. Retrieved from <https://www.bea.gov/news/2020/real-personal-income-state-and-metropolitan-area-2018>

BETSON REPORT

Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." *In* Judicial Council of California, *Review of Statewide Uniform Child Support Guideline*. San Francisco, California. Retrieved from <http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf>.

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